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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-third session

SUMMARY RECORD OF THE 25th MEETING (FIRST PART *)

Held at the Palais des Nations, Geneva,
on Thursday, 21 August 1991 at 5 p.m.

Chairman: Mr. JOINET

later: Mr. HELLER

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The administration of justice and the human rights of detainees

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* The summary record of the second part of the meeting appears as document E/CN.4/Sub.2/1991/SR.25/Add.1.

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The meeting was called to order at 5.35 p.m.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES (agenda item 10) (continued)

(a) QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OF IMPRISONMENT;

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES;

(d) THE RIGHT TO A FAIR TRIAL

(E/CN.4/Sub.2/1991/19 and Add.1, 20, 21, 22, 24, 25, 26, 28, 29, 50, 53 and 56; E/CN.4/Sub.2/1991/NGO/18, 19 and 28; E/CN.4/Sub.2/1991/18; E/CN.4/Sub.2/1990/10, 30 and 32; A/CONF.144/28 and A/CONF.144/INF.2)

1. Mr. EYA NCHAMA (International Movement for Fraternal Union among Races and Peoples) said that his organization was disturbed by the failure to respect the rights of staff members of the United Nations system. Nine of them had been expelled from Mauritania by the Government and they had lost everything they had - their nationality, their property and their jobs. In Zambia, an FAO staff member, Mr. Nyiranda, had died as a result of ill-treatment in prison. A staff member of the International Atomic Energy Agency, Mr. Yue Jiang, had been held in his country, China, for two years now. He hoped that the efforts being made by the United Nations Secretary-General to secure the release of the hostages and the persons detained in the Middle East would also lead to the satisfactory settlement of the cases of some 80 international staff members who had been detained, abducted and reported missing in that part of the world. In Ethiopia, two international civil servants, Mrs. Mebrahtu of the World Health Organization and Mr. Tesfamarian Tseggae of the Economic Commission for Africa, had been released on 23 May 1991, but there was unfortunately still no news of Mr. Belay Melake, another staff member of the Economic Commission for Africa who had been imprisoned since 1978. On behalf of his organization he urged the Ethiopian Government to elucidate those cases.

2. Regarding the drafting of model legislation in application of General Assembly resolution 45/166 and Commission on Human Rights resolution 1991/34, his organization was proposing that all States should incorporate into their legislation the right to the remedy of habeas corpus, which had been adopted by the English Parliament for the first time in 1679, and the right to the remedy of amparo first established by the courts of Aragon, Spain, in 1772. Both remedies constituted a means of protecting individual freedoms, provided of course that they could be exercised effectively without any discrimination and in all circumstances, including during states of emergency. In other words, those rights should be included among those from which there could be no derogation. Furthermore, the term of office of the head of State should be limited in every country because that would be one way of preventing coups d'état and of encouraging the peaceful rotation of political groups in power. When the length of a president's term

was not fixed, those who wanted power sought to obtain it by violent means, by declaring a state of emergency which usually gave rise to violations of human rights and fundamental freedoms. The system of peaceful rotation was applied throughout the Americas as well as in some African countries such as Namibia, Benin, Gabon, the Congo and Angola.

3. His organization greatly appreciated Mr. Despouy's method of updating every year the list of States which had declared, extended or terminated a state of emergency. With regard to the question of the privatization of prisons, he failed to see how States, which had sole responsibility for the punishment of offences, could abdicate that responsibility and allow persons who had broken the law to serve their sentences in a private establishment. Lastly, he said that the report which Mr. Chernichenko and Mr. Treat had been appointed to prepare on the right to a fair trial (E/CN.4/Sub.2/1991/29) would certainly help to terminate the judicial abuses committed in some countries.

4. Mr. GOMEZ (Andean Commission of Jurists) said that there were two ways in which human rights violators could be assured of impunity: either on the basis of a law declaring a general amnesty or through a set of institutional mechanisms which prevented the guilty from being identified, tried and punished. That could well be the case if the persons in question were connected with the armed forces or the security agencies. That was the kind of de facto impunity that prevailed in Colombia.

5. Over the previous 10 years, an average of 3,000 people per year had died or disappeared in Colombia for political or allegedly political reasons but the persons responsible had seldom been tried and punished. Admittedly, in April 1989, Colonel Bohórquez Montaya, the commanding officer of the Puerto Boyala battalion, who had been responsible for liquidating all political opponents in the region, had been stripped of his rank and in July 1990, several members of the army who had been involved in a massacre had been sentenced by a court martial. The Government had sometimes made announcements that many members of the armed forces, especially of the police, had been dismissed for human rights violations but, in fact, those cases had involved a combination of corruption and drug trafficking. The dismissal of General Arias Cabrales by the military body responsible for monitoring the conduct of public officials in the exercise of their duties had not been carried out; the Senate had even awarded the general an additional star. The main persons guilty of human rights violations in Colombia had therefore gone unpunished and were in fact a part of the State machinery and performed their duties unperturbed whilst the death toll continued to rise. The Colombian Government, for its part, had not really followed up the recommendations of the Special Rapporteur on summary or arbitrary executions as set out in his report on his visit to Colombia in 1989 (see document E/CN.4/Sub.2/1990/22/Add.1, para. 67).

6. The obligation of States to respect and safeguard human rights should be reflected in practical measures. In other words, States were bound to investigate any human rights violations that were committed, punish the guilty, and give compensation to the victims or, as appropriate, to their families; otherwise, they would be violating the provisions of numerous

international human rights instruments, in particular article 8 of the Universal Declaration of Human Rights, and article 2, paragraphs 2 and 3 (a) of the International Covenant on Civil and Political Rights as well as article 25 of the American Convention on Human Rights. It could therefore be said that the Colombian State had not discharged that obligation on its territory and that, on the contrary, it had allowed a scandalous situation of widespread impunity to develop, which encouraged those who actively violated human rights to continue to do so. Furthermore, the situation had been exacerbated by the legislative and constitutional reforms that had been adopted recently. Thus, for example, article 91 of the new Constitution, which had come into force on 5 July 1991, exonerated all soldiers on active duty from any responsibility for the violation of the rights of anyone when they had only been obeying the orders of their superior officers. Consequently, it was the latter who were responsible, but their responsibility had to be established by military tribunals, under article 221 of that same Constitution, which strengthened the jurisdiction of those tribunals and furthermore, extended it to the national police. The independence of the courts was one of the fundamental conditions of the administration of justice as laid down in article 10 of the Universal Declaration of Human Rights, article 25 of the American Declaration of the Rights and Duties of Man, article 14, paragraph 1 of the International Covenant on Civil and Political Rights and article 8, paragraph 1 of the American Convention on Human Rights, all instruments to which Colombia was a party. Everyone knew that military tribunals could not be independent or impartial and that furthermore members of the military were always supportive of one another whenever the conduct of any one of them had to be judged. Therefore, military tribunals did not guarantee respect for the right to justice, as the Inter-American Commission on Human Rights had concluded in its report on Chile in 1985. Moreover, it should be highlighted that by virtue of temporary provision No. 8 of the new Colombian Constitution, there had been an extension of several decrees that had been promulgated during the state of siege, which not only violated the principles of impartiality and independence of the judiciary but clearly infringed the rights recognized in the Constitution. As Mr. Joinet had stated in his report on the independence and impartiality of the judiciary (E/CN.4/Sub.2/1990/35), justice should be rendered by a competent, independent and impartial court, but those were not characteristics of military tribunals. The judgement by military tribunals of army officers who had taken part in violations of human rights inevitably led to impunity.

7. The Andean Commission of Jurists was convinced that the human rights situation in Colombia could improve if the Sub-Commission and the Commission on Human Rights acted on the recommendation of Mr. Wako, Special Rapporteur on summary or arbitrary executions, and appointed an expert to submit a report on Colombia and if the Colombian Government was provided with advisory services to assist it in adopting the measures and establishing the mechanisms needed to settle the problems facing that country. Lastly, the Colombian chapter of the Andean Commission of Jurists joined other non-governmental organizations in requesting that an expert should be appointed to draft a working paper on impunity for submission to the Sub-Commission for consideration at its forty-fourth session.

8. Mr. WAREHAM (International Association against Torture - AICT) said that the human rights situation of millions of blacks throughout the world and in the United States in particular had improved very little because the international human rights instruments were not being effectively implemented. The practices of institutions responsible for administering justice and ensuring the human rights of detainees in the United States served to illustrate that point. In the United States of America, blacks, who constituted 12 per cent of the total population, represented 43 per cent of the prison population. There were four times more male blacks imprisoned in the United States than in South Africa. In the State of New York alone there were nearly 56,000 prisoners, over 80 per cent of whom were black or of Hispanic origin. Overcrowding in the prisons had predictably led to unrest. Thus, in May 1991, 50 of the 790 prisoners in the Southport prison, 92 per cent of whom were black or of Hispanic origin, had taken over a cell block for 26 hours, in protest against victimization and ill-treatment by their guards. Several other States were also facing the problem of overcrowding in prisons and it was not going to be resolved in the foreseeable future. His organization tended to agree with Michael Mauer, an expert on the subject, that the significant increase in the prison population (composed essentially of black males) was a consequence of the harsher criminal justice policies of the past decade more than a direct consequence of rising crime. It was obvious that respect for the international instruments in force, such as the Standard Minimum Rules for the Treatment of Prisoners, was being subordinated to political priorities.

9. There was in fact a direct causal relationship between the offences for which blacks were imprisoned in the United States, and the economic underdevelopment of the black population, which arose from a deliberate policy of racism implemented for economic reasons in that most of the prison establishments, for example in the State of New York, were situated in poor, predominantly white-populated areas whose economies depended on the existence of the prisons. There was therefore a vested political and economic interest in maintaining a large prison population composed primarily of those who were already viewed as less than human. The situation was further aggravated by a number of recent decisions by the United States Supreme Court, restricting the right of habeas corpus. Those decisions were contrary to the spirit and letter of the resolutions adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and unfortunately gave an idea of what the new world order would be. The treatment of political prisoners once again exemplified the problems of enforcing international instruments. His organization wished in particular to draw the attention of the Sub-Commission to the fate of one of those political prisoners, Mumia Abu Jamal, a Philadelphia journalist who had been targeted by the Philadelphia police during the 1970s because of his articles and speeches exposing racist police violence. He had been accused of murdering a policeman in December 1981 and sentenced to death in violation of paragraphs 4 and 5 of the safeguards guaranteeing protection of the rights of those facing the death penalty. His organization called upon the Sub-Commission to write to the Governor of Pennsylvania to condemn that violation of human rights and demand that Mr. Abu Jamal's death sentence be commuted.

10. Evasion of international human rights norms was unfortunately not a uniquely United States phenomenon. Thus, torture continued to be used as an instrument of interrogation in Chile and AICT endorsed the recommendation of the Committee against Torture to the Government of Chile in April 1991 that torture should be considered as a separate crime under Chilean domestic law with its own distinct set of penalties. Only recently, a young man had been tortured by the police in Santiago and it was to be regretted that, almost a year and a half after democracy had been established in Chile, torture continued to be practised.

11. AICT was also concerned over the situation in Honduras, where more than 200 cases of persons who had disappeared since 1981 had still not been resolved and where the authorities involved in those enforced disappearances had gone unpunished. It was disturbed over the increase in the number of murders of leaders of popular organizations, including one of its own representatives, who had been killed on 22 July 1991. AICT urged the Government of Honduras to conduct an investigation into those crimes, to punish the offenders and to take measures to ensure the protection of the leaders of organizations for the protection of human rights who continued to be threatened by paramilitary forces and death squads. He asked the Sub-Commission to exert pressure on the Honduran Government to adhere to the international guidelines.

12. All those problems could be resolved, but the issue was to find ways of compelling those to whom those problems were referred to resolve them. The task before the Sub-Commission was to find appropriate means to do so, if it wished all the studies carried out under agenda item 10 to yield practical results.

13. Mr. KHALIL congratulated Ms. Bautista on her excellent report (E/CN.4/Sub.2/1991/24). She had put the problem of juvenile delinquents back into its proper perspective since, as she said, the problem could not be divorced from the socio-economic environment that had created it. It was obvious too that there were enough rules and standards on the subject and that the main concern should be to find ways to ensure that they were respected. She had also been right in underlining the need to facilitate the re-adaptation of young delinquents to society and to that end to ensure that they were separated from adults in prison establishments. In that connection, he said that in Egypt there were special courts for minors guilty of serious crimes as well as special establishments, that were not prisons, where juvenile delinquents were helped to become law-abiding citizens. The prevention of juvenile delinquency was certainly more useful to society than repression, and he could only approve the conclusions reached by Ms. Bautista in her report, in particular the one in paragraph 132 referring to the application of the Riyadh Guidelines. He supported all her recommendations, in particular the one in paragraph 145 that a report should be prepared on the application of recently adopted international instruments.

14. Mr. Despouy continued to carry out his mandate in an exemplary manner and his most recent report (E/CN.4/Sub.2/1991/28) gave a comprehensive picture of the world situation regarding states of emergency. Like Mr. Despouy, he wished to thank the Governments, intergovernmental organizations, non-governmental organizations and United Nations bodies which had assisted

him. His method of submitting indicative maps was very commendable since one could have an idea of the situation worldwide at a glance. All states of emergency, whether they were justified and justifiable or not, tended to create an atmosphere that was not usually conducive to the free exercise of human rights. For that reason, he fully shared the views expressed by the Special Rapporteur in the second part of his report concerning the internal and international legality of states of emergency. He hoped that, in his next report, the Special Rapporteur could submit to the Sub-Commission summary tables by State, as he had done in the past. He too welcomed the fact, as Mr. Despouy had done in paragraph 29, that, in implementation of Economic and Social Council decision 1991/243, a Working Group on Arbitrary Detention had recently been established. He also supported the idea put forward in paragraph 30 of drawing the attention of that Working Group to some special aspects of the question of detention in the specific context of states of emergency. He would however have liked Mr. Despouy to state what those special aspects were, if only by way of example. The figures given in paragraphs 32, 33 and 34 of the report concerning the number of people who had been detained in Chile between 1973 and 1980, in South Africa and in Vietnam after the Vietnam war were impressive, not to say depressing. Lastly, he said that Mr. Despouy had been right in drawing the Sub-Commission's attention to the restrictions on freedom of movement that were usually introduced when a curfew was imposed and to other measures which, in certain circumstances, could constitute serious interference with personal liberty (para. 42 of the report). He warmly congratulated Mr. Despouy on his extremely informative report and said he was certain that the next one would be just as enlightening.

15. Mr. EIDE said that the many reports submitted to the Sub-Commission under agenda item 10 demonstrated that the Sub-Commission was indeed a forum for reflection. He particularly wished to congratulate Ms. Bautista, Mr. Chernichenko and Mr. Treat for the excellent work they had done.

16. With particular reference to the question of human rights and states of emergency, dealt with in Mr. Despouy's report (E/CN.4/Sub.2/1991/28), he was pleased that the Sub-Commission had been able to discuss the crisis situation in the Soviet Union while those responsible for the coup d'état had still been in power. He wished also to pay tribute to the people of Moscow and the other big cities, who had immediately recognized that the coup was an illegal use of force, as well as Presidents Gorbachev and Yeltsin, who had not flinched in the face of danger. That crisis in the Soviet Union raised the question of who was competent legitimately to declare a state of emergency and according to what procedures. Article 21 of the Universal Declaration of Human Rights provided that the basis of the authority of government was the will of the people, as expressed in elections through universal and equal suffrage. That, in turn, implied freedom of association, including in particular the existence of political parties and a constitutional system that provided for the separation of powers and the independence of the judiciary. The last essential principle was the principle of legality - in other words, the laws should be adopted by a legislative assembly elected by the people. Those were the criteria by which a distinction could be made between a state of emergency and an illegal coup d'état.

17. Admittedly in a constitutional system, crises could lead to a partial suspension of normal guarantees and that question had been dealt with by Mrs. Questiaux's study (E/CN.4/Sub.2/1982/15). To the extent that the state of emergency sought only to preserve the life of the nation and to restore democratic order, it was indispensable that national constitutions should lay down provisions as to who could declare a state of emergency and should clearly spell out the relevant procedural guarantees. Otherwise, opponents might risk exploiting the concept of a state of emergency to justify what was in fact a coup d'état with the backing of the army and not in conformity with the will of the people. Therefore Mr. Despouy had done well to ask the Soviet Minister for Foreign Affairs, in his letter of 20 August, what organ of the Soviet Union had adopted the law declaring the state of emergency and whether the latter had been adopted in conformity with the law governing states of emergency enacted by the Supreme Soviet in 1990. Even though it was obvious that what had been carried out was an illegal act, it would be helpful if the Soviet authorities could reply to those two questions.

18. On the subject of the armed forces and states of emergency, he recalled that two days previously, again on the subject of the situation in the Soviet Union, he had pointed out the almost intolerable dilemma with which young people were faced when, on the one hand, they had to adhere to the principles of human rights and on the other, take part in serious violations of those very rights when they served in the armed forces. He was pleased that the young Soviet soldiers had sufficiently assimilated the principles of legality and democracy not to fire. Although in some situations it was perfectly legitimate for the armed forces to maintain law and order, they should also obey the law, and that included the prescriptions in respect of human rights.

19. The situation was particularly difficult in cases of conflict between different nationalities and ethnic groups, or when a Government was confronted with opponents who resorted to terrorism. The armed forces should proceed in the same spirit as the police, in other words concentrating their action on those persons who were suspected of criminal activities, but without treating the nationalities, ethnic groups or members of political groups as enemies, for otherwise violations of human rights as well as aggravation of the conflicts could result. It therefore appeared particularly important to instil in the members of the security forces the principles of human rights. Admittedly, that would not be done without some difficulty, because human rights, the problem of states of emergency and the issue of humanitarian law in armed conflicts came into play. He said that he would reserve the right to address that question at a later date and drew the attention of the Sub-Commission to the new document on minimum humanitarian standards prepared by Mr. van Boven and himself (E/CN.4/Sub.2/1991/55). In his view, account should also be taken of the problem of the flagrant violations of human rights perpetrated by armed opposition movements; it was important to avoid giving them any semblance of justification by criticizing only the misdeeds of Governments. The fact remained that even in those cases, the armed forces should not derogate from human rights and the principles of humanitarian law.

20. On the question of impunity, which had been addressed by many non-governmental organizations and in particular by the International Commission of Jurists and Amnesty International, he said he was persuaded that

impunity brought additional violations of human rights. He himself had noted, during his inquiry into the events in the Baltic States, in Vilnius and in Riga and during his contacts in Moscow, that that phenomenon engendered serious difficulties for the authorities and that, in the instant case, a sufficiently objective inquiry had not been made. It was true that in composite Governments which tried to advance to democracy, the armed forces sometimes played a dangerous role, because their activities pushed opponents to further violence. The Sub-Commission should therefore concern itself, as the non-governmental organizations had requested, with the causes and effects of that phenomenon and consider appointing Special Rapporteurs in the future for other studies on that subject. As had been stated the day before, the Sub-Commission should avoid politicizing those questions and confine itself always to human rights standards, including when dealing with the problem of states of emergency. In conclusion, he said he was very happy that events had turned out so well in the USSR and earnestly hoped that that would also be the case in other countries.

21. Ms. BAUTISTA, like Mr. Eide and the other experts, said that she was pleased with the fortunate outcome of the crisis in the Soviet Union. Those events had reminded her of what had occurred in her country, the Philippines, in 1986, when the soldiers had refused to fire on the women, children and disabled persons who had surrounded the tanks sent out by the dictator. She wished first of all to thank Mr. Eide and Mr. Khalil who had spoken highly of her report on the human rights of detained juveniles (E/CN.4/Sub.2/1991/24). She also welcomed the cooperation that she had been given by Governments, non-governmental organizations and the Secretariat. The Sub-Commission thus had a wealth of valuable information at its disposal for its standard-setting work.

22. Nowadays, it was recognized that prisoners had the right to be treated humanely, not to be arrested illegally, to be informed, to be tried, to have the benefit of the services of a lawyer and guarantees of due process, to be presumed innocent and to have recourse to the procedure of habeas corpus in order to know why they were being detained. If she was an expert in that field it was because she herself had fought against a dictatorship which for years had had people imprisoned in disregard of the most elementary rights. After the downfall of the dictator, a new constitution had been adopted by a large majority and an independent commission on human rights had been established there. She was therefore well placed to reply to the attacks made against her country.

23. First of all, in the area of impunity, it had been said that, in the Philippines, those responsible for human rights violations had not been prosecuted. She wished however to point out in that connection that the Philippine Commission on Human Rights, which, it should be remembered, was an independent organ, had heard hundreds of cases of violations of human rights perpetrated by the members of the police and armed forces. All information declaring that human rights had been violated was sent to the authorities and forwarded to the Commission which, in every case, indicated whether an inquiry had been conducted and whether those responsible had been charged. It was true that the procedures were slow. To rectify that situation, President Aquino had appointed 200 additional judges, who would be

responsible, in the different regions, for dealing with cases of human rights violations and other cases. She also wished to point out that no police or army officer could be promoted without an attestation from the Philippine Commission on Human Rights that he had never been involved in any abuses. Given those circumstances, how could anyone claim that violations of human rights in the Philippines went unpunished?

24. Concerning the independence of the judiciary, the former commission which had been given the responsibility of appointing judges had been abolished because it had been too politicized. At present, judges were appointed by the President. There were cases where judges had been suspended or removed from office, but no judge who had acquitted rebels had ever been killed by members of the armed forces. Furthermore, hundreds of lawyers and observers went into the areas occupied by the rebels and did not hesitate to file complaints, where abuses had taken place, not only against the police and armed forces but also against the rebels themselves. None of those persons had been persecuted by the army, the police or the rebels. Whilst the rebels could benefit from an amnesty - if they were not guilty of criminal acts - there was no amnesty for members of the police or members of the armed forces. As to the allegations that the Philippines was militarized, it should be recalled that the national police was henceforth placed under exclusively civilian control and that a law of July 1991 had repealed a decree enacted by the dictatorship giving the military tribunals exclusive competence for crimes perpetrated by the members of the armed forces. In the army, the principle of hierarchical responsibility was the rule.

25. On the subject of disappearances, she pointed out that under a memorandum of agreement signed between the Ministry of National Defence and the Ministry of Justice, the armed forces and the police, all cases of arrest and detention had to be reported and the circumstances and the date of the events specified. Detainees had to be released in the presence of a member of their family, a lawyer or a responsible official - usually an official of the Department of Public Prosecutions and/or a lawyer of the Philippine Commission on Human Rights. She pointed out also that all lawyers and judges in the Philippines were members of their professional associations and that in all the provinces there were centres which gave free legal assistance.

26. She invited all the non-governmental organizations which had levelled accusations against her country to consult the files dealing with the cases of human rights violations that had been cited. The judiciary was vigilant to ensure respect for the law. There was a lively press which was completely free to speak of human rights violations. As to infrastructure, admittedly recent disasters had slowed down somewhat the building of courts and prisons. The situation was evolving, even if it was regrettable that it was proceeding slowly chiefly because of financial problems. However, violations of human rights were not tolerated in the Philippines.

27. Mr. Heller took the Chair.

28. Mr. FLINTERMAN said that he respected Ms. Bautista's openness of spirit in her reply to the criticisms levelled against her country and appreciated the information she had given.

29. To overcome the problem of impunity, the United Nations system had established mechanisms for dealing with the problem of disappearances, summary or arbitrary executions and torture. Through the work of the working groups and special rapporteurs, it was possible to identify the victims of those practices, who were frequently defenders of human rights, but who were their perpetrators? Were they individuals, mafias, gangs or military groups? It often occurred that no investigations were conducted or if they were, obstacles were put in the way. In some countries, impunity was structural, in that it was officialized by amnesty laws passed by the very persons who had been behind the crimes concerned, as Mr. Joinet's study had revealed. The question of impunity had legal, moral and political dimensions. It was a disastrous practice for the victims and for society and a flagrant violation of human rights and international human rights standards. It was incompatible with the principles of the administration of justice and with measures designed to prevent violations of human rights.

30. In the face of that problem, there were a number of bodies concerned with human rights, namely the Human Rights Committee, the Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights and the Committee against Torture, which had made it clear that Governments should investigate every case and bring the culprits to justice and punish them. The non-governmental organizations had also rightly stressed the urgency of the problem and it would in fact be desirable for the Sub-Commission to devote a study to the question of impunity.

31. Regarding the right to a fair trial, the two special rapporteurs responsible for that subject, Mr. Chernichenko and Mr. Treat, in their latest report (E/CN.4/Sub.2/1991/29) had made an interesting study of the jurisprudence of the Human Rights Committee on the subject. It would certainly be helpful if an analysis could also be made of the jurisprudence of equivalent bodies in Europe and the Americas. Because the scope of application of the study was so vast, the special rapporteurs had also been right in restricting themselves to the cases of persons arrested and detained within the framework of criminal or non-criminal proceedings, leaving until later the possibility of dealing with civil and administrative cases. In particular the special rapporteurs had raised the question of rights in respect of which derogation was or was not possible. In that connection, Mr. Despouy's report on states of emergency and the draft declaration on the protection of all persons against enforced or involuntary disappearances showed that the rights of the remedies of amparo and habeas corpus did not admit of any derogation and that they constituted fundamental aspects of the right to a fair trial. Ms. Bautista had also stressed the importance of the procedure of habeas corpus. On the other hand, he wondered whether the extremely detailed questionnaire appended to the report was useful, whether Governments really had the time to answer it properly and whether it would not be more appropriate to focus on certain countries representing the different legal systems and take into account the research work done on the subject by law institutes. The information communicated by Governments to the Human Rights Committee should also be used. Lastly, in reply to Mr. Chernichenko's questions as to the ultimate aim of his study, he felt that it was to permit the presentation of a set of principles for drafting model legislation and a list of non-derogable rights for inclusion in the proposed new protocol to the International Covenant on Civil and Political Rights.

32. Ms. RUESTA DE FURTER (Observer for Venezuela) said that she would confine herself to the subject of detained juveniles. In that connection, she pointed out that young people had difficulty in making their voice heard, and, by way of example, recalled that when the Convention on the Rights of the Child was being drafted, in particular its article 38 on children in the armed forces, a group of high-school students who wished to change the wording had brought a petition to the Palais des Nations and, although their petition had obtained 300,000 signatures, they had lost the battle. Her delegation therefore encouraged the special rapporteurs and organizations which were seeking to represent the minority constituted by young people - Ms. Bautista and the Defence for Children International Movement - to continue to carry out their mission.

33. Under the item, the Sub-Commission had before it Ms. Bautista's report (E/CN.4/Sub.2/1990/24) and the report of the Defence for Children International Movement (E/CN.4/Sub.2/1991/50). Concerning the second report, her delegation felt that the Spanish translation, by using the terminology of criminal law to render terms of juvenile law, had changed the spirit of the document and it was therefore requesting that the Spanish version should be withdrawn from circulation. She was sure that Ms. Bautista's meaning had also been misrepresented in the translation of document E/CN.4/Sub.2/1991/24, and asked that the translation be revised and, if necessary, withdrawn. She appreciated the work done by Ms. Bautista, who in introducing her report had shown that she was conversant with the problems to be solved and that she was determined to complete her assignment.

34. The report of the Defence for Children International Movement was a highly expert, professional and well-structured document on juvenile law. It was such a technically valuable contribution that she was prompted to suggest once again that the Centre for Human Rights should recruit a staff member who was an expert in juvenile law. The expense incurred would be more than compensated for by the services that such a person would provide to the various units dealing with the rights of the child, for example, the Sub-Commission, the Working Group on Contemporary Forms of Slavery, the Commission on Human Rights and, the Committee on the Rights of the Child. The person would not only help the Secretary-General and the special rapporteurs in their work but would be absolutely necessary to ensure coordination among those different bodies.

35. Mr. AKTAN (Observer for Turkey), speaking in exercise of the right of reply, said that Amnesty International was concerned only with allegations of detention incommunicado and that it was concealing the real purpose of its activities. An allegation was a complaint communicated through a non-governmental organization to the United Nations system and there was usually no evidence to substantiate it. As a result, the number of allegations had become the measure to determine reasonable ground for believing that those communications might reveal the existence of a consistent pattern of gross violations of human rights. However, groups which had decided to realize their aspirations by terrorist activity had every incentive to make such allegations, which formed part of an essential strategy of the struggle because their image was enhanced by it. Although it was rather imprudent to base the system of monitoring human rights on mere allegations,

there was nothing else available and therefore the question of the reliability of the allegations and of the non-governmental organizations which transmitted them was of the utmost importance.

36. Although Amnesty International said that it had never expressed any opinion on the question of Turkey's entry into the European Community, its report on human rights violations in Turkey had increased in volume from 21 pages in 1987 to 141 pages in 1989. That increase could only have been inspired by a political motive in order to give the impression that Turkey was not a part of the West. The fact that, in the early 1980s, 900,000 weapons had been seized from terrorists, who had killed 500 people and wounded twice as many between 1975 and 1980, was also due to political instigation external to Turkey. If those weapons had not been brought into the country from abroad, there would have been no terrorism and the security forces which had been caught unprepared at that time would not have committed any human rights violations. By the same token, the terrorist campaign in south-east Turkey following the 1983 elections had been ethnically motivated and kept alive by certain Western circles for political reasons.

37. In the case of the PKK (Workers' Party of Kurdistan), according to the latest figures, the terrorists had killed 816 civilians, but the names and the fate of the victims had never been mentioned in any Amnesty International reports. Amnesty International had made only a perfunctory reference to the PKK in one paragraph where it said that it unequivocally condemned the torture or killing of prisoners by anyone, including non-governmental groups. The organization had nothing to say about the terrorization of civilians and mentioned only the prisoners, in fact very few, who had been killed or tortured by terrorists. Such a legitimization of the reign of terror over a local population which was opposed to it was simply scandalous and Amnesty International's failure to take any position on it was glaringly obvious. The cause of human rights or the emergence of a new international order would not be served by dismembering countries. The pernicious effects of defending human rights for political reasons should be eliminated before others became victims.

38. He warned against the peculiar approach to the protection of human rights adopted in certain circles. Firstly, the violence inherent in the international system was taken for granted as though it had no effect on respect for human rights. Besides, some circles seemed to consider terror in the developing countries as an unavoidable, and therefore legitimate, means of changing the social structure. They not only condoned but favoured armed struggle and denied its being a form of human rights abuse. There remained violations committed in the struggle against terror in developing countries on which they concentrated their efforts.

39. Moreover, those same circles dissociated the issue of human rights from its social context and focused on respect for human rights in chaotic situations created by recession, famine and civil war in certain developing countries; yet everybody knew that human rights could flourish only under a democratic regime whose survival depended on economic growth and social justice. He noted that the activities in favour of human rights in the developing world had accelerated at the same time as the North-South dialogue

had been relegated to the sidelines. If that state of affairs continued, any enterprise to promote human rights would be nothing more than a sterile struggle between illusory good and evil.

40. Turkey would never be satisfied with vague condemnations of terror and racism. They were both forms of human rights violations and the reports should enumerate them in as detailed a manner as other violations. Until then, those reports would remain unreliable.

41. Ms. GALVIS (Observer for Colombia) paid tribute to the experts for the excellent summaries they had given in their reports and the carefully thought out recommendations and solutions that they had proposed. Such reports were useful to States that were seeking to improve the conditions of detainees, who though marginal to the society also deserved to have their rights respected.

42. She wished mainly to comment on the report on juvenile detainees and the report on human rights and states of emergency. The first report showed clearly that the situation of juvenile detainees deserved the special attention of the international organizations. In future that report should perhaps set out the criteria to be used in formulating recommendations on the kind of institutions to be created to ensure that juveniles who broke the law were treated with respect for their physical and psychological integrity, and their dignity and best interests, in keeping with the fundamental principles established in the Convention on the Rights of the Child. The purposes of the penalty applied to them should also be clearly defined and should not marginalize them from society. Juveniles who broke the law were still in the process of growing up and any punishment of their wrongdoing should be part of their psycho-social training which would mould them to become free citizens, aware of their responsibilities. The experts were now saying that it was extremely harmful to confine juveniles either in a prison institution or with adults. They should, rather, be placed in an open or semi-open institution and only committed to a closed institution in exceptional cases. That was the practice in Bogotá. It would be useful if experts from all the regions could consult one another so that each country could benefit from the experience of the others.

43. Governments would like to receive pointers that could help them in their decisions on the subject and they also wished to have a kind of model for the treatment of juveniles who broke the law and for the type of institution that would be most appropriate to achieve the educational purposes of the punishment. A different approach to the question was needed, one that would permit a better presentation of the experiences of each region.

44. With respect to the report submitted by Mr. Despouy, she said, first of all, that the state of emergency had been lifted in Colombia on 4 July 1991 and that the Constitution of 1990 had made provision for two kinds of states of emergency: the first would be declared in case of a foreign war and the second, if there were public disturbances that could not be controlled by the exercise of the ordinary powers of the competent authorities. In the second case, the duration of the state of emergency had been limited. Furthermore, the President was required to explain to the Congress the reasons for his decision to declare a state of emergency. Under the new provision, civilians could under no circumstances be tried by a military criminal court, human

rights and fundamental freedoms could not be suspended and the rules of international humanitarian law had to be respected. Any decrees enacted by the Government by virtue of the powers with which it was then vested were subject to the control of the Constitutional Court.

45. The new Constitution of Colombia should become an instrument for the complete restoration of the state of law. Civilian society had taken part in drafting it, thus enabling Colombians to become aware of their rights and obligations. It was an instrument for the defence, protection and promotion of the rights of individuals while taking account of their obligations, and the Colombian Government hoped that it would prove to be the most effective means of establishing peaceful coexistence, pluralism and true democracy.

46. Mr. DEESRISUK (Observer for Thailand) congratulated Mr. Despouy on the information submitted in his report, especially on states of emergency which had been proclaimed, extended or terminated throughout the world. In that connection, he said that martial law which had been introduced into Thailand on 23 February 1991 had been lifted on 3 May 1991, that the situation had returned to normal and that the next general elections could be held by the end of the present year or early in 1992. Throughout the period of martial law, the police and the security forces had fully respected human rights and the freedom of the press and of political parties had been maintained.

47. Mr. VILLAROEL (Observer for the Philippines), speaking in exercise of the right of reply, said he was disturbed by the allegations of Amnesty International that the Philippine Government had not been able to curb the human rights violations committed by the vigilantes. Ammesty International was perhaps not aware that the vigilantes had been disbanded three years before.

48. It should be said that in order to put an end to the serious violations of human rights by the vigilantes, they had been disbanded although they had been very effective in combating insurgency. Amnesty International had perhaps not realized that the Philippine Government was constantly re-evaluating its human rights policy in order to strengthen its weak points. However, the Philippines had been left with a legacy of many years of human rights violations and, as Amnesty International had advocated, was asking for the support of the international community. His country also endorsed Amnesty International's call for scrutiny. The year before, for example, the Philippines had been visited by representatives appointed by the Commission on Human Rights and by the International Commission of Jurists.

49. It was however disappointing that the country's goodwill had been rewarded by a demonstration of such little understanding of the difficulties encountered by the countries concerned. For example, the International Commission of Jurists, far from taking into account the considerable difficulties involved in establishing a genuine human rights regime, had stated that virtually no element of Philippine society had any confidence in the Philippine Commission on Human Rights. Such statements were not only of no help to the Governments that were seeking assistance but served to weaken them.

50. Mr. BENHIMA (Observer for Morocco), speaking in exercise of the right of reply, said that some non-governmental organizations, such as the Centre Europe - tiers monde (CETIM), through the intermediary of the Movement against Racism and for Friendship among Peoples, preferred abuse to the dialogue advocated by the Chairman of the Sub-Commission. For his part, he would maintain his equanimity in replying to the allegations of those organizations. As far as the "disappeared Saharans" were concerned, he wondered why the CETIM had only reported them to the Working Group at the beginning of summer 1989, whereas the withdrawal from the territory had taken place in February 1976 and those disappearances were supposed to have occurred back in 1975. Furthermore, the number of persons who had allegedly disappeared since the past year had so increased, that there was no question that humanitarian action was being used for political purposes. In addition, the Working Group on Enforced or Involuntary Disappearances had referred to Morocco only 108 of the 400 cases that a so-called "Association of the relatives of Saharan prisoners and detainees" had communicated to it, and even the list of the working group had included names that had been copied using a different spelling and disappearances reported in places that had not been under Moroccan jurisdiction on the dates when they had allegedly occurred.

51. CETIM, on the other hand, paid no heed to the fact that thousands of persons had fled the Polisario's abduction camps and were returning to their country, Morocco. As far as the 200 Moroccan soldiers detained by the Polisario were concerned, the offer to release them, which was made to look like a humanitarian measure, was accompanied by conditions that bore the stamp of trickery and were unacceptable to Morocco.

52. Lastly, contrary to what the CETIM representative was claiming about the referendum in the Sahara, Morocco was not trying to prevent it from being held. After a meeting with the Minister for Foreign Affairs of Morocco, the Secretary-General of the United Nations had described it as "a very useful encounter" and only recently, the King had reasserted Morocco's firm support for both the content and philosophy of the United Nations peace plan, and had invited the Organization to respect the deadlines fixed and the various stages set out in the plan.

53. Mr. PERCAYA (Observer for Indonesia) said it was unfortunate that certain speakers had used the opportunity to address the Sub-Commission to utter statements about the situation in East Timor that were complete fabrications despite the fact that the topic was not even on the agenda.

54. Ms. RADIC (Observer for Yugoslavia) said that the representative of the International Federation of Human Rights (IFHR) had revealed his poor knowledge of Yugoslavia and misinformed the Sub-Commission about the citizens of Albanian origin living in the region of Kosovo and Metohija, first of all by misrepresenting the name of the region. The region could not have lost its independence in 1990 since it had never been independent and had always been an integral part, either of Yugoslavia or the Kingdom of the Serbs, Croats and Slovenes or before that of the Kingdom of Serbia. As for the allegation that the dissolution of its parliament was unconstitutional, she quoted an official declaration by the Yugoslav Government according to which the declaration of the independence of Kosovo on 23 June 1990 was sheer provocation. As such, it constituted an abuse of minority rights, a violation of international

instruments and a violation of the norms of the rule of law. Quoting further from the declaration, she said that developments had shown that the main purpose was not to seek an improvement of minority rights but rather to create a national State that would in time be incorporated into Albania.

55. Regarding IFHR's the accusations of extra-judicial killings, she gave an assurance that the matter would be brought to the attention of the Yugoslav authorities which, moreover, had never failed to answer any request from either of the Special Rapporteurs, Mr. Wako or Mr. Kooijmans.

56. The Movement against Racism and for Friendship among Peoples had advocated a dialogue between the Yugoslav Government and the Albanian minority. However, for that to happen both parties should want to have that dialogue but, the Albanian minority had overwhelmingly refused to take part in the parliamentary elections of December 1990, thus depriving itself of at least 20 representatives in the parliament; it boycotted the schools even though the language of instruction was Albanian and it had boycotted the Yugoslav census earlier in the year. In the circumstances, could the Albanian minority be said to be truly seeking dialogue? Lastly, she pointed out that the two statements by non-governmental organizations were not even relevant to the agenda item under consideration.

57. Mr. TAUCHI (Observer for Japan) said that he wished to reply to two statements by non-governmental organizations. In the first place, all arrests or detentions in Japan were carried out under strict judicial control and there was a separation of powers. There were full guarantees for the protection of the rights of suspects and detainees (such as an obligatory warrant of detention, testimony before a judge, and the possibility of filing a complaint). There was also a whole series of safeguards against torture.

58. The International Association of Democratic Lawyers had brought up the case of wire-tapping in Japan. The matter had been investigated and it appeared that there had been no abuse of authority by any public officer and the prosecution had been abandoned. The decision had subsequently been confirmed by the courts.

59. Mr. LEE (Observer for the Republic of Korea) said that the remarks made by a representative of a non-governmental organization was a tissue of lies that was all the more surprising as the Repbulic of Korea had made such a great effort since 1988 to strengthen the democratic institutions, particularly in the area of human rights. Those malicious remarks showed clearly that the representative of that non-governmental organization had never been to the Republic of Korea. Besides, the figures quoted were pure fabrication.

60. Obviously, improvements could still be made in certain respects, but the fact that his country had recently acceded to the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol demonstrated his Government's determination to take steps in that direction. The sentencing of police officers who had been over-zealous in curbing student demonstrations was also proof of that determination. He could not therefore take that non-governmental organizations statement seriously.

61. Mr. DEMIRALP (Observer for Turkey), speaking in exercise of the right of reply, pointed out that Turkey was one of the very few States that recognized the competence of the Committee against Torture to deal with individual communications. The representative of the World Organization against Torture (OMCT/SOS Torture) had accused Turkey of practising torture. However, Turkey had recently taken measures which were set forth in document E/CN.4/Sub.2/1991/53 and they had been reinforced by a circular from the Ministry of the Interior published on 6 August 1991, establishing a set of binding rules for the proper conduct of interrogations. In Turkey, every allegation of human rights abuse was investigated. If the plaintiff was not satisfied with the court's decision, he could refer his case to the European Commission or European Court of Human Rights or to the United Nations Committee against Torture. Under the present legislation, systematic or widespread torture simply could not exist in Turkey. He could not agree with the OMCT's views on the anti-terror law, which constituted an important reform to the Turkish legal system. Under that law, 20,000 prisoners convicted of common crimes or terrorist activities had been released. At present there were fewer than 20,000 prisoners in Turkey, which was a very low figure in relation to the size of the population.

62. Another speaker had raised the question of Turkish citizens of Kurdish origin. In Turkey, all citizens were equal before the law and citizens were not even classified according to their ethnic origin. There was one official language as well as some 50 other languages and dialects, none of which was forbidden. In that connection, he pointed out that what was termed the Kurdish language was in fact an amalgam of five different dialects. In Turkey, there were eminent persons of Kurdish origin (ministers, parliamentarians, businessmen, artists and others) and the Kurds were far from being concentrated in one region. It would be misleading to say that the Kurds were an oppressed people, victims of discrimination when, in fact, the Kurdish population in Turkey was a patriotic and highly loyal people.

63. Mr. Joinet resumed the Chair.

64. Ms. ABOUL-EZZ (Observer for Egypt) said that she was always attentive to the non-governmental organizations and it was in that spirit that her country had recently received a delegation from Amnesty International. However, some organizations should make an effort to be credible and in particular to respect the truth and refrain from making exaggerated claims. Thus, she was extremely surprised to hear the allegations of the World Organization against Torture that there had been cases of torture in the Egyptian prisons and that the guilty had gone unpunished. While it was true that some abuses did take place, it could not, however, be said that there was systematic torture and that persons guilty of such reprehensible acts were not prosecuted. The Egyptian Penal Code prohibited torture and prescribed severe penalties for those guilty of it. Article 57 of the Constitution declared that torture was a crime that could not be subject to any time limitation. Furthermore, Egypt was one of the first countries to have incorporated the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into its internal legislation.

65. Mr. LEMINE (Observer for Mauritania) referred the representative of the International Movement for Fraternal Union among Races and Peoples to the reply given by the delegation of Mauritania during the previous session of the Sub-Commission, when that non-governmental organization had spoken on the same topic and in similar vein.

66. Mr. OYARCE (Observer for Chile) said that he wished to reply to two non-governmental organizations. He informed the World Organization against Torture that Chile's Deputy Minister for Foreign Affairs had recently reiterated the commitment of the democratic Government of Chile to the protection of human rights and fundamental freedoms. He emphasized once again, as his country's delegation had done in the Committee against Torture, that torture was no longer practised in Chile. As to the concerns of the Latin American Federation of Associations for Relatives of Disappeared Detainees, he said that the Government would do everything to settle pending cases and that the President of Chile himself had made it a fundamental issue.

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 11)

67. Ms. SCHWARTZ (International Human Rights Law Group) said that she welcomed Mr. Joinet's report (E/CN.4/Sub.2/1991/30). As an organization of lawyers dedicated to promoting the rule of law, her organization attached special importance to the independence of the judiciary and the legal profession and therefore wished to draw the attention of the Sub-Commission to the situation in a number of countries.

68. In the People's Republic of China, the Government continued to hinder actively the practice of lawyers who represented clients accused of political crimes. In the case of Wang Juntao, one of the leaders of the democratic movement, the Chinese Government had not allowed his lawyers to defend him effectively. In another case, the lawyers had been given only four or five days to read a file of nearly 3,000 pages. Those lawyers, Mr. Sun Yachen and Mr. Zhang Sizhi, had also been persecuted for defending their clients.

69. With respect to the situation in Kenya, she welcomed the fact that proceedings to ban the legal periodical, the Nairobi Law Monthly, had been dropped. Nevertheless, detention and criminal charges continued to confront lawyers who defended members of the political opposition and a climate of intimidation prevailed. Contempt charges remained pending against 10 council members of the Law Society of Kenya for making statements on behalf of the council. Another disturbing fact was that the charges brought to court by lawyers representing clients who claimed to have been tortured in detention had been left unaddressed. The independence of the legal community of Kenya was therefore at great risk.

70. In Guatemala, there were continuing obstacles to the independence of the judiciary. She welcomed the news of the detention of seven members of the military implicated in torture and killings, but she observed that there was a continuing pattern of violence against those involved in the judicial system. Raoul Sao Villagran, President of a court of appeal in Antigua, had been kidnapped and then killed on 9 July 1991. On 12 June 1991, Hector Espinoza Carrillo, a lawyer and former judge, had been murdered. On 5 August 1991,

José Miguel Merida, who had been involved in investigating the murder of anthropologist Myrna Mack, had been murdered when he had concluded that members of the armed forces might have been involved in that murder.

71. Lastly, she drew the Sub-Commission's attention to the continuing abuses of the independence of the judiciary in Myanmar. Nearly one and a half years after the election of a people's assembly, the country continued to live under the ruling military State Law and Order Restoration Council, which controlled the entire judicial system, both civil courts and military tribunals. Trial procedures fell far short of international standards (trials were held behind closed doors, judgements were summarily imposed, defendants were not represented by legal counsel, witnesses were not allowed to be heard, etc.). U Kyi Maung, Acting Chairman of the National League for Democracy, and U Chit Khaing, Acting General Secretary, had had their sentences arbitrarily doubled from 10 to 20 years. Aung Son Suu Kyi, leader of the League, was still being detained without trial.

72. She called upon all States to act in conformity with international standards for the independence of the judiciary and to ensure the protection of lawyers. She urged them to adopt the recommendations made by Mr. Joinet in his report, and to renew his mandate.

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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES

Forty-third session

SUMMARY RECORD OF THE 25th MEETING
(SECOND PART*)

Held at the Palais des Nations, Geneva,
on Thursday, 22 August 1991, at 8.35 p.m.

Chairman: Mr. JOINET

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The administration of justice and the human rights of detainees

* The summary record of the first part of the meeting appears as document E/CN.4/1991/SR.25.

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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES (agenda item 10) (continued)

(a) QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT (continued)

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY (continued)

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES (continued)

(d) THE RIGHT TO A FAIR TRIAL (continued)

(E/CN.4/Sub.2/1991/19 and Add.1, 20, 21, 22, 24, 25, 26, 28, 29, 50, 53, 56; E/CN.4/Sub.2/1991/NGO/18, 19, 28; E/CN.4/1991/18; E/CN.4/Sub.2/1990/10, 30, 32; A/CONF/144/28 and A/CONF/144/INF.2)

1. Mr. TURK, referring to item 10 (d), said that the study undertaken by Mr. Treat and Mr. Chernichenko on the right to a fair trial provided a unique opportunity for the Sub-Commission to look into various important human rights questions in a comprehensive manner; it should be supported very strongly despite the difficulties involved.

2. The experience of many countries throughout the world that were preparing new constitutions showed the importance of taking a comprehensive view of a variety of human rights issues relating to a fair trial, and it was for the United Nations to provide an input for discussions in that context.

3. It would be useful if the study were to address the questions mentioned in the preliminary report (E/CN.4/Sub.2/1991/29) in a manner that would help Governments to develop their legislation and also help practitioners. Thus, the preferred direction of legislation should be defined, and questions raised in the report in a neutral way should at some point take the form of a declaration or set of guidelines.

4. Three examples illustrated the relevance of the proposed study and declaration. First, under certain legal systems, military courts had the power to try civilians. While the International Covenant on Civil and Political Rights did not prohibit such an arrangement, those familiar with the situation saw the disadvantages and human rights problems it raised, for example, in cases involving access to alleged military secrets or national security material. It was absolutely necessary in such situations to guarantee the requirements of a fair trial, and military courts were generally speaking not the best institutions to do so. Second, the right to legal counsel was discussed in the report in the light of the legal precedents of the Human Rights Committee. He suggested that the Special Rapporteurs should pay particular attention to the point when legal counsel became available to a person deprived of his liberty, which should preferably be at the earliest possible stage. Emphasizing that right would contribute to the future development of national legislation. The third example was slightly more theoretical, and referred to the traditional dilemma between the inquisitorial and adversarial systems. Each system had its positive and negative aspects, but the International Covenant on Civil and Political Rights gave support to

the adversarial system in article 14. The Special Rapporteurs should be attentive to the need, especially in the Central and Eastern European countries, to strengthen the adversarial component of legislation, and it would be useful if the study provided guidance for that purpose.

5. In conclusion, he said that the right to a fair trial was a central question in many regards and not only from the human rights point of view. In many States, democratic processes had reached the stage where debate on ways to improve the legal and administrative structures was extremely pertinent, and the court system and guarantees that created a fair trial were central in that respect as well. He hoped the study would progress quickly and enable national legislators to make full use of its content.

6. U TIN KYOW HLAING (Observer for Myanmar) recalled that, in his statement to the Sub-Commission on 14 August 1991, he had referred to the need to relate a country's political, social and cultural conditions to any observations made about it, and had also said that his country had reached a delicate and important phase in its history with changes taking place at both the political and economic levels. The allegation of one non-governmental organization that the judiciary was not independent in Myanmar should therefore be seen in the light of certain factors in order to arrive at a fair and balanced assessment.

7. Immediately after assuming power, the State Law and Order Restoration Council (SLORC) had reinstated an independent judicial system, with the Supreme Court at its apex, by the Judiciary Law of 26 September 1988. The same law had reinstated the civilian courts at the State and township levels as well as the Office of the Attorney-General.

8. While it was true that the State Law and Order Restoration Council retained the power to exercise martial law and that military tribunals had been set up in a number of townships, in practice criminal cases were tried by civilian courts. Only special cases involving offences that posed a serious threat to the security of the State were referred to military tribunals. Despite certain quarters' wilful characterization of that exercise as involving human rights violations, such laws and procedures were required in order to preserve and strengthen the rule of law, the maintenance of public order and the protection of national interests. Persons tried by military tribunals enjoyed full protection by normal legal procedures designed to ensure a fair trial.

9. In reply to the reference that had been made to individuals belonging to the National League for Democracy, he said action had been taken against them for breaking the law. The confrontational attitude and subversive acts of those individuals had endangered the peace and security of the country, and the authorities had had no other alternative than to restrain them under existing law.

10. Mrs. UNDERHILL (International Association of Penal Law) said that she represented two organizations: the International Association of Penal Law and the Institute of Higher Studies in Criminal Sciences. The Institute was a non-profit-making international educational foundation, established by Presidential Decree under Italian law, devoted to the multi-disciplinary study of the criminal sciences. It came under the scientific auspices of the

International Association of Penal Law and was funded by various authorities of Siracusa, with funding for specific programmes provided by the Italian Ministry of Justice.

11. Since its inception in 1972, the Institute had conducted conferences, seminars and meetings of experts on various topics related to criminal justice and human rights, attended by jurists from 79 countries, members of law faculties, universities and other higher academic institutions. It had hosted a number of committees of experts with the United Nations and in conjunction with the Council of Europe. Those committees had been convened to prepare draft international instruments including the United Nations Convention against Torture and the Basic Principles on the Independence of the Judiciary.

12. The Institute and the International Association of Penal Law would hold a conference on criminal justice and human rights for Eastern European countries in the last week of November 1991 in Siracusa, Italy, together with the United Nations Crime Prevention and Criminal Justice Branch. The conference was co-sponsored by the Italian Government, and the Centre for Human Rights had been invited to participate. The topics on the agenda included the independence of the judiciary, the role of lawyers and the role of prosecutors, to be discussed on the basis of standards adopted by the Havana and Milan congresses in 1990 and 1985.

13. In addition, a seminar was scheduled for the first week in December 1991, also in collaboration with the United Nations Crime Prevention and Criminal Justice Branch, on the transfer of enforcement of penal sanctions. The purpose of the seminar was to consider the elaboration of a model agreement in that area, in pursuance of the mandate given by the Havana Congress. The final version of the model agreement was to be submitted to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1991 through the future Commission on Crime Prevention and Control and the Economic and Social Council. The model agreement would complement already existing model agreements elaborated and adopted by past United Nations congresses in the area of extradition, transfer of proceedings, mutual assistance in criminal matters and the transfer of foreign prisoners.

The meeting rose at 9.05 p.m.